(16,624)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 132.

THE TOWN OF REAL DE DOLORES DEL ORO, HIPOLITO MONTOYA, ET AL., APPELLANTS,

vs.

THE UNITED STATES ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

INDEX.

	Original.	Print.
Caption	1	1
Petition	1	1
Plat	6	3
Summons	8	3
Marshal's return	9	4
Answer	11	5
Order for continuance	12	5
Motion to make parties defendants	14	6
Order to make parties defendants	15	6
Amended petition	17	7
Amended answer to petition and amended petition	24	10
Exceptions to amended answer	29	14
Proceedings at the trial	31	14
Motion for rehearing	34	16
Judgment	36	17
Opinion	39	19
Clerk's certificate	40	19

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 21, 1898.

1 UNITED STATES OF AMERICA, } ss:
Territory of New Mexico, }

Be it remembered that heretofore, to wit, on the 18th day of February, A. D. 1893, there was filed in the office of the clerk of the court of private land claims, at the city of Santa Fé, in the Territory of New Mexico, a petition; which said petition is in the words and figures following, to wit:

UNITED STATES OF AMERICA:

In the Court of Private Land Claims, Sitting at the City of Santa Fé, in the Territory of New Mexico.

THE TOWN OF REAL DE DOLORES DEL ORO and GUADALUPE Montoya, Petitioners,
vs.
THE UNITED STATES OF AMERICA and THE NEW MEXICO Mining Company, Defendants.

To the honorable chief justice and associate justices of said court:

The Town of Real de Dolores del Oro, an unincorporated town organized under and in pursuance of the Republic of Mexico, as hereinafter set forth, and situated in the county of Santa Fé and Territory of New Mexico, and Guadalupe Montoya, of said county of Santa Fé, bring this their petition against The United States of America and The New Mexico Mining Company as defendants, and thereupon state and show to the court the following:

1.

In the year 1830 the then governor, under the government of the Republic of Mexico, on New Mexico founded the town or vil-
2 lage called the Real de Dolores del Oro under and in pursuance of the laws of Mexico then in force in said Territory.

2.

The said town or village continued in existence from the time of its foundation, with the officers, power, and jurisdiction pertaining to a town or village under the Mexican government, down to the cession of said Territory to the United States, and prior to said date there were not less than forty residents of said town, including not less than twenty householders and heads of families, and a church had been erected and maintained in said town and all of the requirements of the laws of the Republic of Mexico in relation thereto had been complied with, and the said town or village had been and was fully recognized by public authority, and the said town or village was in existence as such at the date of said cession.

3.

By virtue of its creation and existence said town, in addition to what was allotted to its inhabitants in severalty, became and was

entitled under the laws of Mexico to lands for the common use of the town and for late settlers who might lawfully take up their residence thereon, and in default of an actual grant of a larger quantity was entitled by law to a tract, including the lands held in severalty, of four square leagues of land in a square form, with the church or the center of the town as the center of the tract, and extending therefrom one league to each of the cardinal points of the compass.

4.

There is no known direct evidence or record of the grant to said town, although there is reason to believe that a grant was actually made.

3

5.

The said town is not incorporated, and your petitioner, Guadalupe Montoya, brings this petition on behalf of said town and of himself and of all other owners of land within the boundaries of said tract, there being no municipal corporation within the limits of the said tract, and the said Guadalupe Montoya is the owner, by descent and purchase, of a part of the said tract of land embraced in the grant thereof to the said town, and is the successor in part to the rights and title of said original grantee.

6.

Shortly after the acquisition of New Mexico by the United States the Real de Dolores del Oro ceased to exercise the powers and functions of a municipal government and ceased to elect the municipal officers, who previously had administered its affairs.

7.

Said land is all situated in the county of Santa Fé, New Mexico, and includes four square leagues, having the center of the said town, being the church situated therein, as the center thereof, and a map of the same is herewith filed in duplicate.

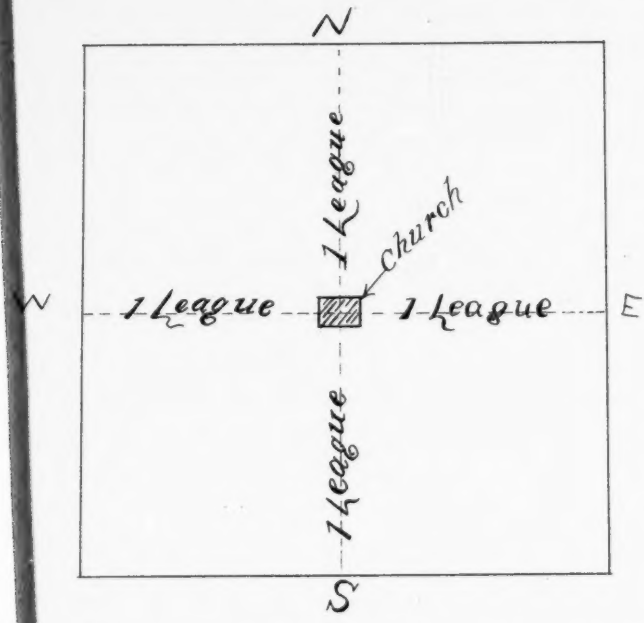
8.

Said tract of land is held and claimed by a large number of persons, including your petitioner, under the said grant, and it is not known that any of the possessors or claimants thereof are adverse to your petitioners; but your petitioners are informed that the defendant The New Mexico Mining Company claims some title or interest therein under and by virtue of an alleged private land grant, which your petitioners allege to be subordinate to the title of your petitioners.

9.

4 No claim for the said tract now petitioned for has ever been submitted to any authorities constituted by law for the determination of land titles in this Territory, so far as known to your petitioners, and no survey of the said tract of land has been made

No. 132.
Town of Real de Dolores del Oro
v.
United States
p. 6



Map of Real de Dolores del Oro
Santa Fe County N M

2 inches = 1 League

10.

No original documents constituting or creating the grant hereby claimed are known to exist, and therefore no such documents can be filed herewith.

11.

Your petitioners therefore claim the said tract of land containing four square leagues, as shown on the map filed herewith, having for its center the center of the old Real de Dolores del Oro, being the church situated therein, and pray that the validity of the said grant may be inquired into and decided by this court, and pray that said tract may be confirmed to the said town or to your petitioner, Guadalupe Montoya, in his own right and in trust for the benefit of the other owners of lands within its limits.

THE TOWN OF DOLORES DEL ORO,
GUADALUPE MONTOYA,
By WARREN, FERGUSSON & BRUNER,
Attorneys for Petitioners.

5 And be it further remembered that thereafter, to wit, on the day and year last aforesaid, there was filed in the office of the clerk a plat; which said plat is as follows, to wit:

(Here follows diagram marked p. 6.)

7 And be it further remembered that, to wit, on the 23d day of March, A. D. 1893, a summons was issued by the clerk of said court; which said summons, with all endorsements thereon, is as follows, to wit:

8 Form No. 167.
U. S. Court of Private Land Claims.

Summons.

UNITED STATES OF AMERICA, } ss:
District of New Mexico, }

In the U. S. Court of Private Land Claims.

GUADALUPE MONTOYA, Plaintiff,
versus
THE UNITED STATES OF AMERICA and The New Mexico Mining Co., Defendant-. } Petition Filed in the Clerk's Office this 18th Day of February, A. D. 1893.

The President of the United States of America to Matt. G. Reynolds, Esq., attorney for the United States before the court of private land claims, Greeting:

You, and each of you, are hereby notified that an action has been brought in said court by Guadalupe Montoya and The Town of Real de Dolores, plaintiff-, against you, as defendant, under the provisions of the act of the Congress of the United States, entitled "An

act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3, 1891, and that a copy of the petition of said plaintiff- is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action, in said court, within thirty days from the date of service of this summons upon you, and if you fail so to do the said plaintiff- will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the court of private land claims, and the seal of the said court, at the city of Santa Fé, in said district, this 23d day of March, A. D. [SEAL.] 1893, and of the Independence of the United States the 116th year.

JAMES H. REEDER, *Clerk*,
By IRENEO L. CHAVES,
Deputy Clerk.

9 *Proof of Service.*

UNITED STATES OF AMERICA, } ss:
District of New Mexico, }

SANTA FÉ, *April 21st, A. D.* 1893.

I hereby certify that I received the within writ on the 23 day of March, A. D. 1893, and that I have personally served the same upon the said defendant, U. S., by delivering to—

Served on me this the 29 day of March, 1893.

MATT G. REYNOLDS,
U. S. Attorney.

and each of them personally a true copy of the within writ at the time and place as follows: As to —— ——, at ——, county of ——, on the — day of ——, A. D. 189-; as to —— ——, —.

This writ, therefore, returned by me, as the law directs, this 21st day of April, A. D. 1893.

TRINIDAD ROMERO, *Marshal*,
By SERAPIO ROMERO,
Deputy Marshal.

[Endorsed:] Real de Dolores grant. Gen. No., 111. F. No., 3. U. S. court of private land claims, district of New Mexico. Guadalupe Montoya and The Town of Real de Dolores, plaintiff-, *versus* The United States of America, defendant. Summons. Filed this 21st day of April, A. D. 1893. James H. Reeder, clerk, by Ireneo L. Chaves, deputy clerk. Warren, Fergusson and Brunner, of Albuquerque, attorney- for plaintiff.

10 And be it further remembered that thereafter, to wit, on the 16th day of April, 1895, an answer was filed in the office of the clerk; which said answer is in the words and figures following, to wit:

11 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Santa Fé District, May Term, 1895.

GUADALUPE MONTOYA, Plaintiffs,
versus
UNITED STATES, Defendant. } No. 111.

Town of Real del D. grant.

Answer.

Comes now the United States, by its attorney, Matt. G. Reynolds, and for answer to the petition filed in the above-entitled cause says:

That for aught it knows to the contrary the matters and things in said petition alleged may be true, but, having no knowledge or information sufficient to enable it to form a belief as to whether they are true, and not confessing any of them to be true in the manner and form as the same are in said petition set forth and alleged, it asks that plaintiff be put to his proof of all the allegations therein contained, as provided he shall be by the act of Congress approved March 3, 1891, under which this court assumes jurisdiction of this controversy, and that he shall be put to his proof as to his pretended interest in said alleged grant.

Now, having fully answered, it prays the court that a decree may be entered rejecting the claim for said alleged grant and dismissing the petition, and for such other orders as to the court may seem meet and proper and which it may be authorized to make in the premises.

Respectfully submitted.

MATT G. REYNOLDS,
U. S. Attorney.

12 And be it further remembered that thereafter, to wit, on the 4th day of June, 1895, the same being a day of the regular May term, 1895, holden at the city of Santa Fé, Territory of New Mexico, the following, among other, proceedings were had, to wit:

GUADALUPE MONTOYA ET AL.
vs.
THE UNITED STATES ET AL., Defendants.

Comes now H. L. Warren, Esq., attorney for plaintiffs in the above-entitled cause, and moves the court to continue the said cause until the next term of the court. It is therefore ordered by the court that this cause be, and the same hereby is, continued until the next term of the court.

13 And be it further remembered that thereafter, to wit, on the 5th day of September, 1896, a motion to make parties

defendant was filed in the office of the clerk; which said motion is in the words and figures following, to wit:

14 In the Court of Private Land Claims, Santa Fé District, 1896.

GUADALUPE MONTOYA, Plaintiff,
vs.
UNITED STATES, Defendant. } No. 111.

Now comes the defendant, The United States, in the above-entitled cause, and moves the court for an order requiring the plaintiff in said cause to make parties defendant adverse possessors and claimants of real estate included within the grant claimed by said plaintiff in the above entitled cause, among said adverse possessors and claimants being the following:

The claimants of San Antonio de las Huertas, No. 209.
" " " " " " No. 90.

Defendant further prays an order of court requiring said plaintiffs to serve each of said adverse claimants and possessors with citation and a copy of their petition acquired by law.

WM. H. POPE,
Ass't U. S. Attorney.

15 And be it further remembered that thereafter, to wit, on the 5th day of September, 1896, the same being a day of the regular August term, 1896, holden at the city of Santa Fé, Territory of New Mexico, the following, among other, proceedings were had, to wit:

GUADALUPE MONTOYA ET AL.
vs.
UNITED STATES ET AL. } No. 111.

In the above-entitled cause it is ordered by the court that the plaintiffs make the following persons parties to the action and serve them with process, it appearing that they were in possession and claiming portions of the land claimed by plaintiff when said action was instituted, viz., the claimants of San Antonio de las Huertas, No. 269 and 90.

16 Be it further remembered that thereafter, to wit, on the second day of April, 1897, there was filed in the office of the clerk of said court, at Santa Fé, New Mexico, an amended petition; which amended petition is in the words and figures following, to wit:

17 UNITED STATES OF AMERICA:

In the Court of Private Land Claims, Sitting at the City of Santa Fé, in the Territory of New Mexico.

THE TOWN OF REAL DE DOLORES DEL ORO and GUADALUPE Montoya, Petitioners,
vs.
THE UNITED STATES OF AMERICA and THE NEW MEXICO MINING Company, Defendants.

To the honorable chief justice and associate justices of said court:

The Town of Real de Dolores del Oro, an unincorporated town organized under and in pursuance of the Republic of Mexico, as hereinafter set forth, and situated in the county of Santa Fé and Territory of New Mexico, and Guadalupe Montoya, of said county of Santa Fé, bring this their petition against The United States of America and The New Mexico Mining Company, Joseph H. Gurule, Francisco Trujillo, Mariano S. Otero, Antonio Jose Callegos, Francisco Francear, Jose Martin Skinner, Jesus Gonzales, Narciso Gonzales, Estaquio Barreras, Felipe Padilla, Asencion Nieto, Francisco Gurule, Jose Aragon, J. Catarino Garcia, Antonio Jose Gallegos, Nicolas Gutierres, Roman Chaves, Reves Candelario, Luis Jose Barreras, J. Vidal Mora, Eusebio Gurule, Roumaldo Nieto, Nicanor Armijo, Jeronimo Gurule, Eutemio Gonzales, Pablo Barreras, Nestor Gonzales, Amado Mora, Emiterio Gutierrez, Dolores Gurule, Jose Candelario, Manuel Candelario, Benito Chaves, Jose A. Garcia y Gurule, Juan Chaves, Antonio Garcia, Pedro Anto. Serna,
18 Juan Antonio Chaves, Jose Emiterio Montano, Simon Gonzales, Marcelion Archibeque, Nestor Nieto, Florencio Martinez, Bacilio Garcia, Merillita Gonzales, Henry Calwell, Jose Padilla, Nabor Gurule, Epifanio Calwell, Luis Chaves, John Calwell, Juan Nieto, Agapito Garcia, Jose M. Serna, Tirsio Lucero, J. M. Skinner, Juan Barros, R. M. Carley, Jose Gallegos, Barbara Gurule, Cirilio Montano, Manuel A. Trujillo, Juan Padilla, Pablito Chaves, Cornelio Montoya, Thomas B. Catron, The Cerrillos Coal Railroad Company, and The Santa Fe Copper Company, as defendants, and thereupon state and show to the court the following:

1.

In the year 1830 the then governor, under the government of the Republic of Mexico, on New Mexico, founded the town or village called the Real de Dolores del Oro under and in pursuance of the laws of Mexico then in force in said Territory.

2.

The said town or village continued in existence from the time of its foundation, with the officers, power, and jurisdiction pertaining to a town or village under the Mexican government, down to the cession of said territory to the United States, and prior to said date there were not less than forty residents of said town, including not

less than twenty householders and heads of families, and a church had been erected and maintained in said town and all of the requirements of the laws of the Republic of Mexico in relation thereto had been compiled with, and the said town or village had been and was fully recognized by public authority and the said town or village was in existence as such at the date of said cession.

3.

By virtue of its creation and existence said town, in addition to what was allotted to its inhabitants in severality, became and
19 was entitled under the laws of Mexico to lands for the commo use of the town and for late settlers who might lawfully take up their residence thereon, and in default of an actual grant of a larger quantity was entitled by law to a tract, including the lands held in severality, of four square leagues of land in a square form, with the church or the center of the town as the center of the tract and extending therefrom one league to each of the cardinal points of the compass.

4.

There is no known direct evidence or record of the grant to said town, although there is reason to believe that a grant was actually made.

5.

The said town is not incorporated, and petitioner Guadalupe Montoya brings this petition on behalf of said town and of himself and of all other owners of land within the boundaries of said tract, there being no municipal corporation within the limits of the said tract, and the said Guadalupe Montoya is the owner by descent and purchase of a part of the said tract of land embraced in the grant thereof to the said town and is the successor in part to the rights and title of said original grantee.

6.

Shortly after the acquisition of New Mexico by the United States the Real de Dolores del Oro ceased to exercise the powers and functions of a municipal government and ceased to elect the municipal officers who previously had administered its affairs.

7.

Said land is all situated in the county of Santa Fé, New Mexico, and includes four square leagues, having the center of the said town, being the church situated therein, as the center thereof, and a map of the same is herewith filed in duplicate.

20 8.

Said tract of land is held and claimed by a large number of persons, including your petitioner, under the said grant, and it is not known that any of the possessors or claimants thereof are adverse to your petitioners, but your petitioners are informed that the de-

fendant-, The New Mexico Mining Company, Joseph H. Gurule, Francisco Trujillo, Mariano S. Otero, Antonio Jose Gallegos, Francisco Francear, Jose Martin Skinner, Jesus Gonzales, Narciso Gonzales, Eustaquio Barreras, Felipe Padilla, Asencion Nieto, Francisco Gurule, Jose Aragon, J. Caterino Garcia, Antonio Jose Gallegos, Nicolas Gutierres, Roman Chaves, Reyes Candelario, Luis Jose Barreras, J. Vidal Mora, Eusebio Gurule, Roumaldo Nieto, Nicanor Armijo, Jeronimo Gurule, Eutemio Gonzales, Pablo Barreras, Nestor Gonzales, Amado Mora, Emiterio Gutierrez, Dolores Gurule, Jose Candelario, Manuel Candelario, Benito Chaves, Jose A. Garcia y Gurule, Juan Chaves, Antonio Garcia, Pedro Anto. Serna, Juan Antonio Chaves, Jose Emiterio Montano, Simon Gonzales, Marcelino Archibeque, Nestor Nieto, Florencio Martinez, Bacilio Garcia, Merillita Gonzales, Henry Calwell, Nabor Gurule, Epifanio Calwell, Luis Chaves, John Calwell, Jose Padilla, Juan Nieto, Agapito Garcia, Jose M. Serna, Tirsio Lucero, J. M. Skinner, Juan Barros, R. M. Carley, Jose Gallegos, Barbara Gurule, Cirilio Montano, Manuel A. Trujillo, Juan Padilla, Pablito Chaves, Cornelio Montoya, Thomas B. Catron, The Cerillos Coal Railroad Company, and The Santa Fe Copper Company claims some title or interest therein under and by virtue of an alleged private land grant, which your petitioners allege to be subordinate to the title of your petitioners.

9.

No claim for the said tract now petitioned for has ever been submitted to any authorities constituted by law for the determination of land titles in this Territory so far as known to your petitioners, and no survey of the said tract of land has been made.

10.

No original documents constituting or creating the grant hereby claimed are known to exist, and therefore no such documents can be filed herewith.

11.

Your petitioners therefore claim the said tract of land, containing four square leagues, as shown on the map filed herewith, having for its center the center of the old Real de Dolores del Oro, being the church situated therein, and pray that the validity of the said grant may be inquired into and decided by this court, and pray that said tract may be confirmed to the said town or your petitioner Gjadalupe Montoya in his own right and in trust for the benefit of the other owners of lands within its limits.

12.

May it please your honors to grant unto your petitioners the writ of subpœna issued out of and under the seal of your honors' court, commanding the said The United States of America, The New Mexico Mining Company, Joseph H. Gurule, Francisco Trujillo, Mariano S. Otero, Antonio Jose Gallegos, Francisco Francear, Jose

Martin Skinner, Jesus Gonzales, Narciso Gonzales, Eustaquio Barreras, Felipe Padilla, Acencion Nieto, Francisco Gurule, Jose Aragon, J. Caterino Garcia, Antonio Jose Gallegos, Nicolas Gutierres, Roman Chaves, Reyes Candelario, Luis Jose Barreras, J. Vidal Mora, Eusebio Gurule, Roumaldo Nieto, Nicanor Armijo, Jeronimo Gurule, Eutemio Gonzales, Pablo Barreras, Nestor Gonzales, Amado Mora, Emiterio Gutierrez, Dolores Gurule, Jose Candelario, Manuel Candelario, Benito Chaves, Jose A. Garcia y Gurule, Juan Chaves, Antonio Garcia, Pedro Anto. Serna, Juan Antonio Chaves, Jose
22 Emiterio Montano, Simon Gonzales, Marcelino Archibeque, Nestor Nieto, Florencio Martinez, Bacilio Garcia, Merillita Gonzales, Henry Calwell, Nabor Gurule, Epifanio Calwell, Luis Chaves, John Calwell, Jose Padilla, Juan Nieto, Agapito Garcia, Jose M. Serna, Tirsio Lucero, J. M. Skinner, Juan Barros, R. M. Carley, Jose Gallegos, Barbara Gurule, Cirilio Montano, Manuel A. Trujillo, Juan Padilla, Pablito Chaves, Cornelio Montoya, Thomas B. Catron, The Cerillos Coal Railroad Company, and The Santa Fe Copper Company to be and appear before your honors' court on a day and under a penalty therein named to answer all and singular the premises, and that your honors will grant your petitioners such other and further relief as the nature of their case may require and as to your honors may seem meet and proper; and your petitioners will ever pray.

THE TOWN OF DOLORES DE ORO,
GUADALUPE MONTOYA,
By H. L. WARREN, *Attorney for Petitioners.*

23 And be it further remembered that thereafter, to wit, on the 17th day of May, 1897, there was filed in the office of the clerk an amended answer to petition and amended petition; which said amended answer is in the words and figures following, to wit:

24 In the Court of Private Land Claims, Santa Fé District, 1897.

GUADALUPE MONTOYA ET AL.,
Plaintiffs,
vs.
UNITED STATES ET AL.
} No. 111. Town of Real de Dolores.

Now comes the defendant The United States, and for its amended answer to the petition and amended petition in the above-entitled cause says:

First. That it is not true, as alleged in said petition, that in the year 1830 the then governor under the government of the Republic of Mexico founded the town or village called the Real de Dolores del Oro in pursuance of the laws of Mexico, then in force in said Territory.

Second. That it is not true, as alleged in said petition, that said town or village continued in existence from the time of its foundation, with the officers, powers, and jurisdiction pertaining to a town or village under the Mexican government, down to the cession of

said territory to the United States; and that it is not true, as alleged, that said town or village had been and was fully recognized by public authority, or that the same was in existence as such at the date of said cession.

Third. That it is not true, as alleged in said petition, that said town, even if created and existing as alleged, became and was entitled, under the laws of Mexico, to lands for the common use of the town and for late settlers who might lawfully take up their residence thereon; nor is it true that said town was entitled by law to a tract of four square leagues of land in a square form, with the church or the center of the town as the center of the tract, and extending therefrom one league to each of the cardinal points of the compass.

Fourth. That as to all other matters alleged in said petition defendant has no knowledge or information sufficient to enable it to form a belief as to whether they are true, and accordingly denies the truth of the same, and prays that plaintiffs be put to strict proof thereof.

Fifth. Defendant, further answering, says that, even if said grant as alleged — made as set forth in said petition, the land claimed
25 in said petition under and by virtue of said alleged grant was and is entirely within the limits of a tract of land known as the Ortiz Mine grant, which, by virtue of the laws, usages and customs, and mining ordinances of Mexico, was on the 18th day of December, 1833, made to Jose Francisco Ortiz and Ignacio Cano. The claim for which said land so granted, consisting of sixteen square leagues of land, being two leagues in each of the four cardinal directions from the Santa Rosalia mine, was presented by the successors in interest of said grantees to the surveyor general of New Mexico, under the provisions of the eighth section of the act of Congress of June 27, 1854, for his approval, and that such proceedings were had before said surveyor general that afterwards, to wit, November 24, 1860, said surveyor general of New Mexico approved the said claim and transmitted the same to Congress and recommended its confirmation, and that afterwards, to wit, under and by virtue of the act of Congress approved March 1st, A. D. 1861, entitled "An act to confirm a certain private land claim in the Territory of New Mexico," said Congress of the United States confirmed said claim as recommended for confirmation; which said act is in words and figures as follows, to wit:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the private land claim in the Territory of New Mexico, as recommended for confirmation by the surveyor general of that Territory, and in his report to the Commissioner of the General Land Office, of November twenty-fourth, eighteen hundred and sixty, designated as number forty-three, be, and the same is hereby, confirmed: Provided, that the foregoing confirmation shall only be construed as quitclaim or relinquishment, on the part of the United States, and shall not affect the adverse rights of any other person or persons whomsoever."

That under and by virtue of said act of confirmation a survey of said grant so recommended for *for* confirmation and so confirmed

was duly made by the public authorities lawfully constituted therefor, and on the 20th day of May, A. D. 1876, letters patent for said confirmed grant duly issued to the New Mexico Mining Company as the owners of said Ortiz Mine grant.

Defendant shows that by virtue of said act of confirmation and said letters patent the said New Mexico Mining Company acquired
the interest of the United States in and to said sixteen square
26 leagues of land, including the grant herein claimed as aforesaid, and that by said act of Congress the right to said land was vested in said New Mexico Mining Company, and said action of Congress was and is conclusive and binding upon this court, for the reason that by the act establishing this court it is specifically provided that no claim shall be allowed for any land the right of which has been hitherto lawfully acted upon it and decided by Congress or under its authority.

Defendant, further answering, says that said confirmation, as aforesaid, passed any title acquired by the United States under the treaty of Guadalupe Hidalgo, and that the United States has no interest in said property, and none which this court could pass to plaintiff herein, and that said claim is not one which, under the treaty of Guadalupe Hidalgo, the laws of nations, and the acts of Congress, is entitled to be confirmed by this court.

Sixth. Defendant, further answering, says that even if any such grant was made, as set forth in said petition, the land thereby attempted to be confirmed was and is, to the extent of about two thousand acres, within the limits of a tract of land known as the Mesita de Juana Lopez grant, which was granted by the Spanish government on the 18th day of January, A. D. 1782, to Domingo Romero, Miguel Ortiz, and Manuel Ortiz, a claim for which said tract of land was presented by the heirs of said grantees to the surveyor general of the Territory of New Mexico, under the provisions of the 8th section of the act of Congress of June 22nd, 1854, on the 30th day of September, 1872, for his approval, and that such proceedings were had before said surveyor general that afterwards, to wit, on the 29th day of November, 1872, said surveyor general of New Mexico approved the said claim and transmitted the same to Congress, recommending its confirmation, and that afterwards, to wit, on the 28th day of January, A. D. 1879, said Congress of the United States confirmed the said claim as recommended for confirmation; which said act is in words and figures as follows:

"That the private land claim in the Territory of New Mexico known as the Mesita de Juana Lopez grant, made by the Spanish
government January eighteenth, seventeen hundred and
27 eighty-two, examined, approved, and recommended for confirmation by the surveyor general of New Mexico, November twenty-ninth, eighteen hundred and seventy-two, designated as private land claim number sixty-four, and duly surveyed by the United States, the field-notes of the survey and plat being approved by the surveyor general of New Mexico on February twenty-eighth, eighteen hundred and seventy-seven, be, and the same is hereby confirmed: Provided, that the foregoing confirmation shall only

be construed as a quitclaim or relinquishment of all title or claim on the part of the United States in and to said private land claim, and shall not affect the adverse rights of any person or persons to the same; nor shall the United States be liable to make compensation for any part of said land to which there are or may be any adverse rights or claim."

That by said act of confirmation the survey of said grant theretofore made under direction of the surveyor general of New Mexico, approved by him on February 28, 1877, was approved, and that subsequently, said matter having come before the Secretary of the Interior of the United States for his action under the provisions of the laws of the country, he, being thereby authorized and empowered with exclusive jurisdiction to pass upon such questions, in an opinion dated May 13th, 1893, held and decided that said act of confirmation before mentioned was a confirmation of said claim according and by the survey there-fore approved by the surveyor general of the Territory of New Mexico, and that said confirmation was coextensive with and limited by the boundaries designated in said survey, and that said act of confirmation of said claim and said survey and by force of its own terms passed the title according to said boundaries to the said claimants.

Defendant alleges that the right to said land has to the extent of said conflict with said Mesita de Juana Lopez grant been by the Congress of the United States and by said act of confirmation adjudged to be in the heirs of Domingo Romero and others, and that by said act of confirmation all title acquired by the United States under the treaty of Guadalupe Hidalgo in and to said land situate as aforesaid within the Mesita de Juana Lopez grant passed to the successors in interest of the grantees of said Mesita de Juana Lopez grant, and that as to said land within said Mesita de Juana Lopez grant as aforesaid this court has no jurisdiction to enter a decree of confirmation for the same.

Therefore defendant prays that said claim for said grant herein sued for be rejected and the said petition dismissed.

MATT. G. REYNOLDS,
U. S. Attorney.

28 And be it further remembered that thereafter, to wit, on the 17th day of May, 1897, there *was* filed in the office of the clerk exceptions to said amended answer; which said exceptions are in the words and figures following, to wit:

29 *Exceptions to Answers.*

In the Court of Private Land Claims, Santa Fé District.

POLITO MONTOYA, JOSE MONTOYA, TIRCIO MONTOYA, and Abran Montoya, Heirs-at-law of Guadalupe Montoya, Petitioners,
vs.
THE UNITED STATES ET AL.
} No. 111.

The petitioners except to so much and such parts of the amended answer herein of the defendant The United States as is set forth in the fifth paragraph or subdivision of said amended answer, to the substance and effect that the land described in petitioners' amended petition is within the limits of a tract of land known as the Ortiz Mine grant, consisting of sixteen square leagues of land, granted on December 13th, 1833, by virtue of the laws, usages, and customs of Mexico to Jose Francisco Ortiz and Ignacio Cano, being two leagues in each of the four cardinal directions from the Santa Rosalia mine, and which grant was approved by the surveyor general of New Mexico and confirmed by act of Congress approved March 1, 1861, and said tract of land surveyed by the public authorities lawfully constituted therefor, and letters patent therefor issued to the New Mexico Mining Company, dated May 20, 1876, and that by virtue of said confirmation and patent the right to said land was vested, as against these petitioners, in the New Mexico Mining Company, and that said action of Congress is conclusive and binding upon this court for the reason set forth in said amended answer, and for grounds of exception the petitioners show unto the court that said amended answer does not allege that the right of the petitioners to said land described in their amended petition has ever been lawfully acted upon or decided by Congress or under its authority; and said amended answer in said matters so set forth
30 in said paragraph fifth is insufficient in law to constitute any defense to said petition.

WARREN, FERGUSSON & GILLETT,
Att'y- for Petitioners.

31 *Transcript of the Trial.*

In the Court of Private Land Claims, Santa Fé, New Mexico, May Term, 1897.

GUADALUPE MONTOYA
vs.
UNITED STATES.
} No. 111. Town of Real de Dolores.

On May 17th, 1897, the above-entitled cause was called up for hearing, and the following proceedings were had therein in open court:

Appearances: Messrs. Warren, Fergusson & Bruner, for the plain-

tiff; Wm. H. Pope, Esq., assistant U. S. attorney, for the Government; Messrs. Catron, Spiess & Gortner, for No. 90; Mr. G. Hill Howard, for No. 269.

Mr. WARREN: I wish to suggest the death of the petitioner and the substitution of his only heir as petitioner.

COURT: Very well.

Mr. WARREN: I will read the amended petition filed in the case.

Mr. CATRON: I enter my appearance for Jose H. Gurule, M. S. Otero, and Francisco Trujillo, petitioners in case No. 90 of this court. I also ask leave to file an answer denying the allegations in case No. 111.

Mr. POPE: The Government files an amended answer in this case on trial.

Mr. HOWARD: I enter my appearance for the petitioners in case No. 269 in this court, and reserve the right to file an answer in this case on trial.

Mr. WARREN: We dismiss the petition as to Thomas B. Catron, the Cerrillous Coal Railroad Company, and the Santa Fe Copper Company. We except to the amended answer of the Government. This is the first time I have seen this amended answer of the Government.

COURT: You may take that course.

Mr. WARREN: We will file these exceptions in a few moments. I am ready now to file these exceptions.

COURT: Under any construction which we are able to put upon the amended petition, the claim of the plaintiffs was imperfect at the time the sovereignty and jurisdiction was acquired by the United States over this country, and it appears by the answer that
32 the Government has confirmed another grant and patented all of the lands that are included in this claim. Under this state of facts we could not confirm to the petitioner any portion of the lands, and the exceptions will be, therefore, overruled.

Mr. WARREN: The petitioners will stand upon the exceptions.

COURT: And that will result in the dismissing of the petition. This is not a question of jurisdiction at all. We think we have jurisdiction of every claim here for an alleged grant.

Mr. CATRON: We want the record to show that Mr. Warren stands upon his exceptions, and does not desire to introduce any evidence or proceed further in the case.

Mr. WARREN: That there may be no misunderstanding, we stand upon the exceptions to the answer and that the petition is dismissed.

Mr. CATRON: We ask that the order be made rejecting the claim and dismissing the petition.

Mr. WARREN: The court please, I desire to give notice of an appeal from the dismissing of the petition.

COURT: The usual practice has been just to make a written application for an appeal. The appeal is allowed.

SANTA FÉ, NEW MEXICO, *June 16th*, 1897.

I hereby certify that the above and for g-ing one (1) and a part pages contain a full, true, and correct transcript of all the proceedings had in the above-entitled cause.

W. J. McPHERSON,
Official Stenographer.

[Endorsed:] Filed in the office of the clerk court of private land claims Jun- 16, 1897. Jas. H. Reeder, clerk, by —— ——, deputy.

33 And be it further remembered that thereafter, to wit, on the 17th day of May, 1897, a motion for rehearing was filed in the office of the clerk; which said motion is in the words and figures following, to wit:

34 In the Court of Private Land Claims, Santa Fé District.

HIPOLITO MONTOYA ET AL., Heirs-at-Law of Guadalupe Montoya, and The Town of Real de Dolores del Oro
vs.
UNITED STATES OF AMERICA ET AL.
} No. 111.

Now come the petitioners, by their attorney, and move the court for a rehearing of their exceptions to paragraph fifth (5th) of the amended answer in said cause, and for cause show unto the court the following reasons, viz:

1. Said cause was heard upon the exceptions of the petitioners to the fifth paragraph or separate portion of the amended answer of the United States to the amended petition, and the court erred in carrying back the said exceptions to the amended petition herein and in determining upon the said exceptions the sufficiency of the allegations of said amended petition to establish the grant therein alleged and described of the lands therein mentioned to the said petitioners, or their predecessors in interest, as a perfect and complete grant thereof.

2. The said amended answer denies and puts in issue the allegations of said amended petition, and said p-ragraph or subdivision fifth thereof is new matter, specially pleaded as a separate defence, and the exceptions thereto of the petitioners were improperly overruled.

3. The petitioners were surprised at said hearing by the filing of said amended answer and for other sufficient reasons.

4. Upon a rehearing the petitioners can and will make good and sufficient proof and showing of the validity of said town grant alleged in said amended petition.

H. L. WARREN,
Attorney for Petitioners.

[Endorsed:] No. 111. Motion for rehearing of exceptions to answer. (Copy.)

35 And afterwards, to wit, at a stated term of the court of private land claims, begun and held at Santa Fé, on the 4th

day of May, A. D. 1897, and on the 12th day of said term, the same being the 17th day of May, 1897, the following, among other, proceedings were had, to wit:

36 In the Court of Private Land Claims, Santa Fé District.

GUADALUPE MONTOYA ET AL.
vs.
THE UNITED STATES OF AMERICA ET AL. } No. 111.

Now come the petitioners, by their attorney, and in open court suggest the death of the petitioner Guadalupe Montoya, and by leave of court the said cause is revived and continued by and in the names of Hipolito Montoya, Jose Montoya, Tircio Montoya, and Abran Montoya, the only surviving heirs-at-law of the said Guadalupe Montoya, deceased, who are, by leave of court, substituted herein as petitioners in lieu of said deceased, and the said petitioners dismiss the said cause as to the following-named defendants to the amended petition, to wit: Thomas B. Catron, The Cerrillos Coal Railroad Company, and The Santa Fe Copper Company, and the defendant The New Mexico Mining Company, by Matt. G. Reynolds, its attorney, and the defendants Joseph H. Gurule, Francisco Trujillo, and Mariano S. Otero, by T. B. Catron, their attorney, and the defendants Antonio Jose Gallegos, Francisco Francear, Jose Martin Skiner, Jesus Gonzales, Narciso Gonzales, Eustaquio Barreras, Felipe Padilla, Ascencion Nieto, Francisco Gurule, Jose Aragon, J. Catarino Garcia, Antonio Jose Gallegos, Nicolas Gutierrez, Roman Chavez, Reyes Candelario, Luis Jose Barreras, J. Vidal Mora, Eusebio Gurule, Roumaldo Nieto, Nicanor Armijo, Geronimo Gurule, Eutemio Gonzales, Pablo Barreras, Nestor Gonzales, Amado Mora, Emiterio Gutierrez, Dolores Gurule, Jose Candelario, Manuel Candelario, Benito Chavez, Jose A. Garcia y Gurule, Juan Chavez, Antonio Garcia, Pedro Anto. Serna, Juan Antonio Chavez, Jose Emiterio Montano, Simon Gonzales, Marcelino Archibeque, Nestor Nieto, Florencia Martinez, Basilio Garcia, Marrillita Gonzales, Henry Calwell, Nabor Gurule, Epifanio Calwell, Luis Chavez, John Calwell, Jose Padia, Juan Nieto, Agapito Garcia, Jose M. Serna, Tircio Lucero, J. M. Skiner, Juan Barros, R. M. Carley, Jose Gallegos, Barbara Gurule, Cirilio Montano, Manuel A. Trujillo, Juan Padilla, Pablito Chavez, and Cornelio Montoya, by George Hill Howard, their attorney, respectively come and enter their appearance herein and waive the issue and service of summons

37 and respectively waive service of a copy of the amended petition upon them and the right to plead, answer, or demur to said amended petition.

And the defendant The United States, by Matt. G. Reynolds, its attorney, by leave of court, files it- amended answer to the petition and amended petition herein, and the petitioners, by leave of court, file their exceptions to so much and such part of the said amended answer of the said defendant as is contained and set forth in paragraph, clause, or subdivision numbered fifth (5th) of said amended

answer of the said defendant upon the alleged ground of impertinence thereof.

And this cause now coming on to be heard upon the said exceptions of the petitioners to the matters set forth and contained in said paragraph, subdivision, or portion thereof numbered fifth (5th) of the said amended answer of the said defendant, and the argument of counsel being heard and the court, being sufficiently advised in the premises, doth find as conclusions of law from the facts set forth and alleged in said amended petition and in said paragraph, subdivision, or portion numbered fifth (5th) of said amended answer of the United States that the alleged grant made in the year 1830, set forth in the amended petition, of the lands described therein, was not a perfect and complete grant thereof at or prior to the date of the cession of New Mexico to the United States under and by virtue of the laws, usages, and customs of the Republic of Mexico in force at the alleged date thereof, and that the lands embraced within the said alleged grant to the petitioners lie wholly within the exterior boundaries of the tract of land described in said paragraph, subdivision, or portion numbered fifth (5th) of said amended answer, which was granted by the Republic of Mexico in the year A. D. 1833 to the grantees, Ortiz and Cano, and confirmed to the New Mexico Mining Company by the Congress of the United States of America in and by the act of Congress entitled "An act to confirm a certain land claim in the Territory of New Mexico," approved March 1st, 1861, and included within the exterior boundaries of the land embraced and described in the patent of the United States dated May 20, 1876, issued to the New Mexico Mining Company, as alleged in said fifth (5th) paragraph of
38 amended answer, and that the right to the said land having been thereby lawfully acted upon and decided by Co*b*gress and the Government of the United States having divested itself of the title to the said property by the said act of confirmation and the said patent issued in pursuance thereof, this cause cannot be maintained in this court for the confirmation of the claim of petitioners alleged in said amended petition.

It is therefore ordered that the said exceptions of the petitioners to the said paragraph, subdivision, and portion numbered fifth (5th) of the said amended answer of the United States be, and the same hereby, are overruled and denied; and the said petitioners thereupon electing to stand upon their said exceptions and in view of the said ruling declining to introduce evidence in support of said petition, it is ordered, adjudged, and decreed by the court that this cause be, and the same is, dismissed and the claim rejected.

And the said petitioners in open court pray and are hereby allowed an appeal from this judgment and decision to the Supreme Court of the United States.

39 And be it further remembered that thereafter, to wit, on the 18th day of June, 1897, an opinion was filed in the office of the clerk; which said opinion is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Santa Fé District, 1897.

THE TOWN OF REAL DE DOLORES DEL ORO and GUADALUPE MONTOYA, Plaintiffs,
vs.
THE UNITED STATES OF AMERICA and THE NEW MEXICO MINING COMPANY, Defendants. } No. 111.

Opinion of the Court.

REED, *C. J.:*

In passing upon plaintiffs' exceptions to the answer of the Government we hold—

First, That plaintiffs' petition alleges but an equitable claim—that is, the title pleaded is not shown to have been complete and perfect at the time the Government of the United States acquired jurisdiction of this Territory;

And, se-nd, that the Government having divested itself of the title to the property by the act of confirmation and the patent issued in pursuance thereof, an action cannot be maintained in this court for the confirmation of plaintiffs' claim.

40 UNITED STATES OF AMERICA,
Territory of New Mexico.

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the foregoing is a full, true, and correct transcript of all the papers filed and proceedings had in said court in the case entitled The Town of Real de Dolores del Oro and Guadalupe Montoya against The United States of America and The New Mexico Mining Company, as the same remain of record and on file in my office.

Witness my hand and the seal of the said court, at my office in Santa Fé, New Mexico, this 17th day of June, A. D. 1897.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

JAMES H. REEDER, *Clerk,*
By IRENEO L. CHAVES, *Deputy.*

Endorsed on cover: Case No. 16,624. Court of private land claims. Term No., 132. The Town of Real de Dolores del Oro, Hipolito Montoya, *et al.*, appellants, *vs.* The United States *et al.* Filed July 10th, 1897.